

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	ET Docket No. 99-255
Wireless Medical Telemetry Service	)	

**Reply Comments of the Office of Advocacy, U.S. Small Business Administration**

The Office of Advocacy of the United States Small Business Administration (“Advocacy”)<sup>1</sup> respectfully submits these Reply Comments in the above-captioned proceeding,<sup>2</sup> by which the Federal Communications Commission (“Commission”) would establish a Wireless Medical Telemetry Service (“WMTS”) to protect medical telemetry devices from interference.

While the Commission states that WMTS would impact small business, it does not make a scintilla of an effort to describe this impact, nor does it propose alternatives that minimize this impact while ensuring that medical telemetry devices operate without interference from other services. Therefore, the Notice of Proposed Rulemaking (“NPRM”) and regulatory flexibility analysis do not satisfy the Regulatory Flexibility Act of 1980,<sup>3</sup> as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Subtitle II of the Contract with America Advancement Act<sup>4</sup> (“RFA”). The Commission should not establish final rules before it conducts a proper initial regulatory flexibility analysis.

**1. The NPRM Does Not Consider Impact on Small Business.**

The Commission indicates that its proposed WMTS rules might impact approximately

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<sup>1</sup> Congress established Advocacy in 1976 by Pub. L. No. 94-305 to represent the views and interests of small business within the Federal government. (Codified as amended at 15 U.S.C. §§ 634 a-g, 637.) Advocacy serves as a focal point for concerns regarding the government’s policies as they affect small business, develops proposals for changes in Federal agencies’ policies, and communicates these proposals to the agencies. (*See* 15 U.S.C. § 634c(1)-(4).) Advocacy also monitors agency compliance with the RFA and reports this to Congress.

<sup>2</sup> *Wireless Medical Telemetry Service, Notice of Proposed Rulemaking*, ET Docket No. 99-255, FCC 99-182 (rel. July 16, 1999).

<sup>3</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980)(codified at 5 U.S.C. § 601 et seq.).

ninety percent of small radiofrequency equipment manufacturers and over half of all small hospital firms and nursing care firms in the nation.<sup>5</sup> The law requires the Commission, under these circumstances, to analyze the rules' impact and propose ways to minimize it. But the Commission does not discuss the burdens its rules would impose nor ways to lessen them.

The NPRM discusses establishing WMTS within spectrum bands sought by other services, including private land mobile services. But the NPRM does not discuss the impact of accommodating WMTS to small service providers in these bands. The NPRM also proposes to require future medical telemetry equipment to comply with new technical and interference standards and operate at different frequencies than current equipment does. But the Commission does not discuss the impact of these requirements on small equipment producers. Nor does the Commission discuss alternatives designed to minimize this impact.

The Commission must "assure that small entities have been given an opportunity to participate in the rulemaking"<sup>6</sup> but it fails to analyze the impact of its rules on small business and it fails to actively solicit small business input to its NPRM. Thus, the Commission fails to assure small business participation in this proceeding.

**2. The IRFA does not describe the impact of WMTS on small business and does not propose significant alternatives designed to minimize this impact.**

Under the RFA, once the Commission determines that its proposed rules would have a significant impact on a substantial number of small entities, it must prepare an initial regulatory flexibility analysis ("IRFA").<sup>7</sup> The IRFA must describe the impact of the rules on small entities<sup>8</sup>

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<sup>4</sup> Pub. L. No. 104-121, 110 Stat. 857 (1996)(codified at 5 U.S.C. § 612(a)).

<sup>5</sup> See NPRM, Appendix A, page 2.

<sup>6</sup> See 5 U.S.C. § 609(a)(3).

<sup>7</sup> See 5 U.S.C. § 603(a).

<sup>8</sup> *Id.*

and propose alternatives that would minimize this impact and serve the rules' purpose.<sup>9</sup> The IRFA satisfies none of these statutory requirements in this case.

An IRFA must estimate the number of small entities which its rules would affect.<sup>10</sup> WTMS would affect 7,953 small nursing care firms (out of a total of 11,471) and 294 small hospital firms (out of 3,856). Additionally, the rules would affect many small manufacturers of medical telemetry equipment.<sup>11</sup> But the IRFA also must describe the impact the proposed rule would have on these small entities. The IRFA in this case does not.

The Commission's IRFA must propose significant alternatives, consistent with its stated rulemaking objectives, that would minimize significant economic impact on small entities.<sup>12</sup> At minimum, the IRFA must discuss four statutorily-mandated alternatives: (1) different compliance requirements or timetables, (2) clarified, consolidated, or simplified compliance requirements, (3) use of performance rather than design standards, and (4) exemption.<sup>13</sup> The IRFA does not propose any alternatives designed to minimize impact on small business. The Commission merely restates general alternatives proposed in its NPRM, alternatives that have nothing whatever to do with small business. This is insufficient. The IRFA must propose alternatives that specifically address impact on small business.

## **Conclusion**

The Commission fails to consider the impact of its WMTS rules on small business. The

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<sup>9</sup> See 5 U.S.C. § 603(c).

<sup>10</sup> See 5 U.S.C. § 603(b)(3).

<sup>11</sup> The IRFA explains that 778 out of 858 communications equipment manufacturers are small and that many of these companies make medical telemetry equipment. But the IRFA does not more specifically identify the number of affected medical equipment makers. The Commission's obligation to assure small business participation in its rulemaking includes the obligation to reach out directly to potentially affected small businesses. See 5 U.S.C. § 609(a)(3). The Commission should approach groups that represent such entities, both to get a better idea of their numbers and to get their input.

<sup>12</sup> See 5 U.S.C. § 603(c).

<sup>13</sup> See 5 U.S.C. § 603(c)(1-4).

Commission does not describe the impact and does not identify alternatives that would minimize the impact. For these reasons, the Commission must prepare a proper regulatory flexibility analysis. This analysis must explain the burdens the new rules would impose on which small businesses and must consider ways to minimize this impact, while serving the stated objectives of the proposed rules. The Commission should avoid a one-size-fits-all approach and should promulgate rules that serve the Commission's goals yet minimize unintended consequences for small business and competition.

Respectfully submitted,

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